

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

RICHARD AGUILAR, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Cause No. 4:14-cv-00985-LRR
)	
PNC BANK, N.A.,)	
)	
Defendant.)	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant PNC Bank, N.A. (“PNC”), pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for its motion for summary judgment on all remaining claims states:

1. The Amended Complaint originally asserted claims for aiding and abetting fraud, breach of fiduciary duty, negligence, violation of various provisions of Missouri’s Uniform Fiduciaries Law (“UFL”), aiding and abetting breach of fiduciary duty, conspiracy to breach fiduciary duty, and conspiracy to violate the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(d) (“RICO”). *See* Docket Number (“Doc.”) 6.
2. On November 19, 2014, the Court dismissed the claims for aiding and abetting fraud (Count IV), breach of fiduciary duty (Count VI) and negligence (Count VIII). *See* Doc. 26.
3. As explained in more detail in the accompanying memorandum in support of this motion and statement of undisputed material facts (which PNC incorporates by reference herein), there is no genuine dispute as to any material fact regarding the remaining counts and PNC is entitled to judgment as a matter of law on all remaining claims.

4. PNC is entitled to judgment in its favor on Count I, II, and III under the UFL because the UFL is transaction-specific and Plaintiffs identify no transaction in which any particular plaintiff's funds were misappropriated.

5. PNC is also entitled to judgment in its favor on Counts I, II, and III because there is no evidence that Allegiant Bank, N.A. ("Allegiant") or any other PNC predecessor had actual knowledge of any misappropriation or acted in bad faith.

6. Plaintiff is entitled to judgment in its favor on Count V (aiding and abetting breach of fiduciary duty) because: (a) there is no evidence that Allegiant or any predecessor of PNC knew of any breach of fiduciary duty, and (b) there is no evidence that Allegiant or any PNC predecessor provided "knowing and substantial assistance" to any breach of fiduciary duty.

7. Plaintiff is entitled to judgment in its favor on Count VII (conspiracy to breach fiduciary duties) because there is no evidence that Allegiant or any predecessor of PNC came to a meeting of the minds with Martin Sigillito or J. Scott Brown regarding any criminal objective.

8. Plaintiff is entitled to judgment in its favor on Count IX (conspiracy to violate RICO) because: (a) the claims of all Plaintiffs who first joined this suit on July 15, 2014 (that is, all Plaintiffs other than Richard Aguilar, Melba Aguilar, Albert Carrell, Sharon Cobb, Clayton Givens, Linda Givens, Stanley Kuhlo, Gina Mastrantonio, Phil Rosemann, Loren Winterhof, and Mary Winterhof) are untimely under the governing four-year statute of limitations, and (b) there is no evidence that Allegiant or any PNC predecessor bank intended to further a criminal offense.

9. PNC is entitled to judgment in its favor on its counterclaim against Richard Aguilar, David Caldwell, Linda Givens, Donald Horner, Rudolf Ouwents, William Phillips, Carol Phillips, and Lewis Vollmar (collectively, the "Counterclaim Defendants") because each of the Counterclaim Defendants executed an IRA agreement that obligated him to indemnify

Allegiant for “any loss [Allegiant] may incur as a result of [the account owner’s] direction, actions or failures to act.” Allegiant’s successor PNC has suffered losses in the form of attorneys’ fees and costs in this action arising out of the account owners’ decisions to invest with Martin Sigillito.

WHEREFORE, PNC is entitled to judgment in its favor on each of Plaintiffs’ remaining claims and on PNC’s Counterclaim against the Counterclaim Defendants.

Dated: August 3, 2015

Respectfully submitted,

BRYAN CAVE LLP

/s/ Jeffrey S. Russell

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed using the Court's CM/ECF system on August 3, 2015, which will serve notice upon all counsel of record.

/s/ Jeffrey S. Russell